

Amendment Agreement dated as of December 31, 1972, among The First National Bank of Chicago (hereinafter called the Agent), acting as Agent under a Finance Agreement dated as of November 1, 1972, with certain investors, General Electric Company (hereinafter called the Builder), First Western Bank and Trust Company, as Trustee under Trust Agreement No. 2 dated as of November 1, 1972, with First National Bank in St. Louis (hereinafter called the Vendee), and Burlington Northern Inc. (hereinafter called the Railroad).

6815-E  
RECORDATION NO. \_\_\_\_\_ Filed & Recorded  
NOV 7 1973 - 10 55 AM  
INTERSTATE COMMERCE COMMISSION

WHEREAS the Builder, the Railroad and the Vendee have entered into a Conditional Sale Agreement No. 2 dated as of November 1, 1972, as amended by Amendment Agreement dated as of November 30, 1972, and Amendment Agreement dated as of December 4, 1972 (hereinafter called the Conditional Sale Agreement), covering the sale of locomotives;

WHEREAS the Builder, by an Agreement and Assignment No. 2 dated as of November 1, 1972, between the Agent and the Builder, has assigned all of its right, title and interest in the Conditional Sale Agreement to the Agent;

WHEREAS the Vendee and the Railroad have entered into a Lease of Railroad Equipment No. 2 dated as of November 1, 1972, as amended by the Amendment Agreements referred to above (hereinafter called the Lease); and

WHEREAS the parties hereto now desire to amend further the Conditional Sale Agreement and the Lease.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

1. Annex B to the Conditional Sale Agreement and Schedule A to the Lease are hereby amended to add Erie, Pennsylvania, as a place of delivery.

2. The Lease is hereby amended by replacing subclause (b)(iii) in the first paragraph of § 10 thereof with the following:

"an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the investment credit (hereinafter called the Investment Credit) allowed by Section 38 and related sections of the Internal Revenue Code of 1954, as amended, lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of the Lease, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default plus such sums as, in the reasonable opinion of the Lessor, will cause the Lessor's net return under this Lease to be equal to the net return that would have been available to the Lessor if it had been entitled to utilization of all or such portion of (x) the maximum depreciation deductions authorized with respect to a Unit under Section 167 of the Internal Revenue Code utilizing the 'class lives' prescribed in accordance with Section 167 (m) of said Code (hereinafter called the Depreciation Deduction) and (y) the deductions in each taxable year of the Lessor for all interest accrued during such year on the Conditional Sale Indebtedness (as defined in the Security Documents), computed in accordance with Section 163 of the Internal Revenue Code (hereinafter called the Interest Deduction) which was lost, not claimed, not available for claim, disallowed or recaptured

in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 17 or any other provision of this Lease, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default."

3. The first three paragraphs of § 17 of the Lease are hereby deleted and restated as follows:

"The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended from time to time and the regulations thereunder (hereinafter called the Code), to an owner of property, including (without limitation) an allowance for the Investment Credit, the Interest Deduction and the Depreciation Deduction (all as defined in § 10 of this Lease), with respect to the Units to the extent so provided.

"With respect to any Unit, if (other than for the reasons set forth below) the Lessor shall lose or shall not have or shall lose the right to claim, or if (other than for the reasons set forth below) there shall be disallowed with respect to the Lessor, all or any portion of the Investment Credit, the Interest Deduction or the Depreciation Deduction (using the double declining balance method switching to the sum of the years digit method as provided in Section 167(b) of the Code) with respect to a Unit in computing taxable income for the period this Lease is in effect, then, after written notice thereof to the Lessee by the Lessor, the rental rate applicable to such Unit set forth in § 3 of this Lease shall be increased by an amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return in respect of such Unit under this Lease to equal the net return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Investment Credit, the Interest Deduction or Depreciation Deduction which was not claimed or was disallowed and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest which may be assessed by the United States against the Lessor attributable to the loss of

all or any portion of the Investment Credit, the Interest Deduction or Depreciation Deduction, provided, however, that such rental rate shall not be so increased if the Lessor shall have lost, or shall not have or shall have lost the right to claim, or if there shall have been disallowed with respect to the Lessor all or any portion of the Investment Credit, the Interest Deduction or Depreciation Deduction with respect to such Unit as a direct result of the occurrence of any of the following events:

"(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under Section 7 hereof;

"(ii) a voluntary transfer by the Lessor (other than as contemplated by the Conditional Sale Agreement) of legal title to such Unit, the disposition by the Lessor of any interest in such Unit or the reduction by the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

"(iii) the amendment of the Conditional Sale Agreement without the prior written consent of the Lessee;

"(iv) the failure of the Lessor to claim the Investment Credit, the Interest Deduction or Depreciation Deduction in its income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming the Investment Credit, the Interest Deduction or Depreciation Deduction with respect to such Unit; or

"(v) the failure of the Lessor to have sufficient liability for the tax against which to credit such Investment Credit or sufficient income to benefit from the Interest Deduction or the Depreciation Deduction, as applicable.

If the Lessee does not agree with the calculations of the Lessor for the increased rentals payable pursuant to this paragraph or for the amounts payable under clause (iii) of subparagraph (b) of § 10 hereof, the

Lessor and the Lessee will both submit the basis of their calculations to Arthur Andersen & Co. or such other party as the Lessor and the Lessee may agree upon for final determination. If the final determination is that such increased rentals or amounts are less than the Lessor's determination thereof, the Lessor will repay to the Lessee the amount of the difference theretofore paid by the Lessee.

"The Lessor agrees that if, in the opinion of its or the Lessee's independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of the Depreciation Deduction, the Interest Deduction or the Investment Credit exists in respect of which the Lessee is required to pay increased rental and interest and/or penalty as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax paid attributable to the Depreciation Deduction, the Interest Deduction and/or Investment Credit disallowed, at the penalty interest rate per annum then charged by the Internal Revenue Service for overdue payments, from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 17. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have agreed in writing to indemnify the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested."

4. The Railroad will promptly cause this Amendment Agreement to be filed, recorded, and deposited in like manner as the Conditional Sale Agreement and the Lease.

5. Except as amended hereby, the Conditional Sale

Agreement and the Lease shall remain unaltered and in full force and effect.

6. This Amendment Agreement may be executed in counterparts and it shall not be necessary for each party to execute the same counterpart so long as each party shall execute one counterpart which shall be delivered to the other parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first above written.

GENERAL ELECTRIC COMPANY,

by

Manager--Marketing, Locomotive  
Products Department

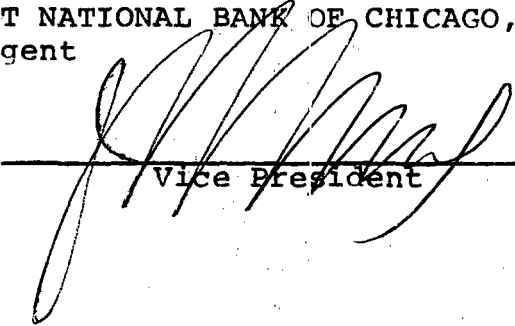
[Corporate Seal]

Attest:

Assistant Secretary

FIRST NATIONAL BANK OF CHICAGO,  
as Agent

by

  
\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

  
\_\_\_\_\_  
Assistant Secretary

FIRST WESTERN BANK AND TRUST COMPANY,  
as Trustee under Trust Agreement No. 2  
dated as of November 1, 1972,

by

\_\_\_\_\_  
Vice President

\_\_\_\_\_  
Trust Officer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Assistant Secretary

BURLINGTON NORTHERN INC.,

by

\_\_\_\_\_  
Vice President

[Corporate Seal]

Attest:

\_\_\_\_\_  
Secretary

COMMONWEALTH OF PENNSYLVANIA )

) SS. :

)

On this            day of            , 1973, before

, to me

personally known, who, being by me duly sworn, says that he is

a General Manager--Locomotive Products Department of GENERAL

ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation,

that said instrument was signed and sealed on behalf of said

corporation by authority of its Board of Directors, and he

acknowledged that the execution of the foregoing instrument

was the free act and deed of said corporation.

Notary Public

(NOTARIAL SEAL)

My Commission Expires:



STATE OF ILLINOIS )  
 ) ss.:  
COUNTY OF COOK )

On this 16<sup>th</sup> day of April, 1973, before  
me personally appeared J. R. GRIMES, to me personally  
known, who, being by me duly sworn, says that he is a Vice  
President of THE FIRST NATIONAL BANK OF CHICAGO, that one of  
the seals affixed to the foregoing instrument is the corporate  
seal of said banking association, that said instrument was  
signed and sealed on behalf of said banking association by  
authority of its Board of Directors, and he acknowledged  
that the execution of the foregoing instrument was the free  
act and deed of said banking association.

*F. Kaiser*

Notary Public

[NOTARIAL SEAL]

My Commission Expires: MAR 27 1977

STATE OF CALIFORNIA                    )  
  ) ss.:  
COUNTY OF SAN FRANCISCO,            )

On this            day of            , 1973, before me personally appeared            and            , to me personally known, who, being by me duly sworn, says that each is a Vice President or Trust Officer, respectively of First Western Bank and Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and each acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]

My Commission Expires:

STATE OF MINNESOTA )  
COUNTY OF RAMSEY ) ss.:

On this       day of       , 1973, before  
me personally appeared       , to me personally  
known, who, being by me duly sworn, says that he is a Vice  
President of BURLINGTON NORTHERN INC., that one of the seals  
affixed to the foregoing instrument is the corporate seal  
of said corporation, that said instrument was signed and  
sealed on behalf of said corporation by authority of its  
Board of Directors and he acknowledged that the execution  
of the foregoing instrument was the free act and deed of  
said corporation.

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Notary Public

[NOTARIAL SEAL]

My Commission Expires: